

Costs Decision

Site visit made on 20 December 2016

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 January 2017

Costs application in relation to Appeal Ref: APP/X1545/W/16/3157810 Honeywood Farm, Honeypot Lane, Stow Maries, Essex CM3 6RT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Brown for a full award of costs against Maldon District Council.
 - The appeal was made against the refusal to grant prior approval required under Schedule 2, Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the conversion of an agricultural building into two x 1 bed self-contained dwelling units.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The applicant has applied for an award of costs on the basis that the Council has not substantiated the reason for refusal. Specifically, it is claimed that the Council based the reason for refusal on unwarranted speculation regarding potentially undesirable use of the part of the appeal building which is not proposed for conversion to residential use. The applicant argues that this amounted to unreasonable behaviour and, consequently, has been put to unnecessary expense in preparing an appeal which should not have been required.
 3. It is implicit in the Class Q permitted development right that the residential use will be located in an agricultural setting. Although the PPG requires consideration to be given to whether that location would make the use undesirable, any assessment should be based on actual harmful impacts or, at least, the realistic expectation that they will occur in the future.
 4. The letter submitted with the original application summarises the previous and current uses of the appeal building and those nearby. Whilst poultry farming had previously taken place, the letter explains why that activity has ceased and that the prevailing use of the buildings was for storage. I recognise that the application did not allow for control over the use of the remainder of the appeal building which could, therefore, change over time. Nevertheless, the application letter indicates that it would be used for office activity and there is
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no substantive evidence to suggest that it would be likely to be used for other, more intensive, agricultural purposes. Nor is there anything in the Council's evidence to indicate that it had assessed the suitability of the remaining part of the appeal building to accommodate other, less desirable uses.

5. The Council cited a number of appeal decisions in support of its position. However, in each of those cases, there appears to have been some basis for concluding that the locations of the proposed dwellings would be undesirable. For the reasons outlined above, I consider that the same cannot be said of the current proposal.
6. As such, the Council has not adequately substantiated the reason for refusal resulting in an appeal which should not have been necessary. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Mr A Brown the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
8. The applicant is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Warder

INSPECTOR